IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3926 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

RAMBHAI NARANBHAI - Respondent(s)

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Appearance :

MR PD BHATE, AGP, for Petitioner(s) : 1,
MR NAVALDAN R LANGA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/10/2005

ORAL JUDGMENT

In this petition, the petitioner State Government has challenged the legality of an award dated 25th June 2000. By the impugned award, the Labour Court was pleased to allow the reference of the respondent-workman

and his termination dated 24.11.91 was declared as illegal. The workman was ordered to be reinstated in service with continuity and full backwges.

2. Before the Labour Court, the respondent had approached complaining about his termination with effect from 24.11.91. It was the case of the workman that he had worked for more than 240 days in 12 calendar months prior to the date of termination and his service was terminated without following the provisions of section 25-F of the Industrial Disputes Act. On the other hand, the petitioner had raised the contention regarding the jurisdiction of the Labour Court contending that the department in which the respondent was engaged was not an industry. The Labour Court though noted this contention of the petitioner in its impugned award, gave no finding about the same.

3. The petitioner had filed a written statement in which it was specifically contended that the petitioner does not fall within the definition of the term “industry” since it is a department of the State and does not carry on any business, trade or industry. The Industrial Disputes Act therefore does not apply and the

Labour Court, therefore, has no jurisdiction to entertain the reference. As noted, the Labour Court did note this contention in the impugned award, but gave no finding thereon. The respondent was employed by the Forest Department. In the decision of Full Bench of this Court in the case of G.F.P.G.F.W. Union v. State, 2004 (2) GLR 1488, the Full Bench held that whether any unit or establishment or undertaking of the Forest and Environment Department of the State Government is an industry or not will depend upon the nature of the work done by such unit and only when the activity undertaken satisfies the triple test laid down by the Hon'ble Supreme Court in the case of Bangalore Water Supply Case (AIR 1978 SC 548) that such a unit can be held to be an industry. The observations made by the Full Bench in this regard can be noted :

> “Que-1 “Whether the Forest Department and the Irrigation Department of the State can be said to be an industry within the meaning of Sec. 2(j) of the Industrial Disputes act, 1947 or not?
>
> Que -2 Whether Forest Department of the “State” is an industry or not?
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> Ans-1 The Forest and Environment Department of the State Government is not an industry under Sec.2(j) of the Industrial Disputes Act, 1947 and the question whether any of its unit, establishment or undertaking is an industry or not will depend upon the nature of the work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods land/or

> services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test, that such unit, establishment or undertaking of the Department can be said to be industry, unless falling in the categories removed by constitutional and competently enacted legislative provisions from the scope of the Industrial Disputes act as indicated in clause (c) of Item IV of the guidelines laid down by the Supreme Court in Para 161 of Bangalore Water Supply case (supra), including the law falling under Arts.309 to 311 of the Constitution.
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> Ans.2 The activity of Irrigation and Canal Works undertaken by the Narmada Water Resources and Water Supply Department is an “industry” under Sec.2(j) of the Industrial Disputes Act, 1947.”

4. From the above discussion, it can be seen that the entire Forest and Environment Department has not been held to be an industry and only the unit or undertaking which satisfies the triple test as held in Bangalore Water Supply case (supra) that the Labour Court can entertain a reference and consider the question of legality of the termination. In the present case, though the contention was raised, it was not decided by the Labour Court.

5. The impugned award is therefore quashed and set aside. The proceedings are remanded back to the Labour Court for deciding the question whether the respondent

was an employee in a unit which can be termed as an industry. Both sides will have an opportunity to lead fresh evidence. With these directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)